WOLTER OIL CO.

IBLA 81-466, 81-520 Decided March 15, 1982

Appeal from a decision of Idaho State Office, Bureau of Land Management, denying protest against the identification of unit 31-14, Appendicitis Hill, as a wilderness study area.

Affirmed.

1. Administrative Procedure: Adjudication -- Administrative Procedure: Administrative Review -- Appeals -- Federal Land Policy and Management Act of 1976: Wilderness -- Wilderness Act

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

APPEARANCES: Wolter Oil Company, by George P. Wolter, Jr., President; Dale D. Goble, Esq., Office of the Solicitor, U.S. Department of the Interior, for the Bureau of Land Management.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

Wolter Oil Company (Wolter) has appealed from a February 12, 1981, decision of the Idaho State Office, Bureau of Land Management (BLM), denying its protest against the identification of unit 31-14, Appendicitis Hill, as a wilderness study area (WSA). BLM's decision, published in the Federal Register on February 13, 1981, at 46 FR 12338, made no changes in the unit's boundaries or composition (24,870 acres) as a result of the protest; and BLM's final intensive inventory decision for Idaho, previously published on November 14, 1980, remained in effect.

BLM's action designating this unit as a WSA was taken pursuant to section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1976). That section directs the Secretary to review those roadless areas of 5,000 acres or more that were identified during the inventory required by section 201(a) of FLPMA as having wilderness characteristics described in the Wilderness Act of September 3, 1964, 16 U.S.C. § 1131(c)

(1976). After this review, the Secretary is to report to the President his recommendation as to the suitability or nonsuitability of each such area for preservation as wilderness.

The wilderness characteristics referred to in section 603(a) are defined in section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c) (1976) as follows:

> A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or historical value.

The wilderness review process undertaken by BLM State Office has been divided into three phases: Inventory, study, and reporting. The announcement of final intensive inventory decision marks the end of the inventory phase of the review process and the beginning of the study phase.

Wolter makes two principal arguments on appeal, first, that unit 31-14 does not meet the wilderness criteria of the Act and, second, that the wilderness classification of this unit, on which numerous oil and gas lease offers are pending, is contrary to the public interest because it delays the opportunity to increase oil and gas production. In support of its first argument, appellant urges that the unit contains numerous roads to watering tanks, irregular boundaries, and unimpressive topography. Appellant also questions the existence of abundant wildlife or other significant wilderness attributes in the unit, and alleges that because of man's imprint within the unit and easy access to it, there is little opportunity for solitude. In support of its second argument, appellant cites the large number of oil and gas leasing applications each year (covering six times as much acreage in 1980 as in 1979), alleges 4-year delays in the actual issuance of leases, and points out that any pending offer would become void on December 31, 1983, under the Wilderness Act. Thus, appellant contends that the unit generally is not suitable for designation as a wilderness.

In response, the Solicitor notes that the boundaries of wilderness areas are at the Secretary's discretion, that the existence of "roads" rather than mere "ways" in unit 31-14 is simply alleged by appellant without proof, that watering sites are not considered "substantially noticeable" and are permitted under wilderness criteria, that solitude is a matter of judgment, and that the absence of wildlife or the availability of other, more desirable potential

wilderness areas is irrelevant to the inventory process. In short, he argues that appellant has failed to meet its burden of proof in demonstrating that BLM's decision is in error.

We agree. As the Board said in Union Oil Co. (On Reconsideration), 58 IBLA 166, 170 (1981):

> The inventory phase was designed to determine and demarcate those areas of the public lands which were possessed of the wilderness criteria established by Congress. Upon the determination that such characteristics were presently existent (or could, in certain circumstances be developed by natural forces or manual means), the areas were to be designated as WSA's which would then be studied for possible inclusion in the wilderness system.
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> During this study phase, BLM would endeavor to analyze each WSA's suitability for wilderness designation in conjunction with the whole range of other public land uses that Congress has authorized. Thus, the mineral potential of any tract would be examined in the study phase to determine the impact that a permanent wilderness designation might have on such values. Moreover, this analysis is not limited to only mineral values, but embraces the full range of public uses, including grazing and recreational use, with an aim to determining the relative merits of a specific parcel's inclusion in the wilderness system. Indeed, the entire purpose of the study phase is the generation of data sufficient to make informed choices between competing claims to the land.

The decision went on to say:

> With regard to the visual impact of [an adjacent mine], we feel that appellant's submissions * * * are insufficient to overcome the great weight which we should accord opinions of BLM officials which are premised by visual inspection in addition to photographic review. It is not enough to show an arguable difference of opinion [citing Richard J. Leaumont, 54 IBLA 242, 88 I.D. 490 (1981)]. An appellant seeking reversal of a decision to include or exclude land from a WSA must show that the decision below was premised either on a clear error of law or a demonstrable error of fact. This was not done in the instant case. * * *
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> This does not mean, however, that the concerns of the appellant were groundless. We do not find them so. Indeed, we expect the study phase to examine rigorously the impacts generated by the present existence of the * * * [mine].

58 IBLA at 171.

This reasoning is equally applicable to the present case. In particular, we have no reason to doubt that during the study phase of unit 31-14, BLM will give special attention to merits of devoting all or part of

the unit to oil and gas exploration rather than to preservation as a wilderness area. As to the identification of this area as a WSA, however, appellant has not sustained its burden of proof. Thus, on the basis of Union Oil, supra, and Leaumont, supra, we find no error in BLM's decision.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bernard V. Parrette
Chief Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge